

¹ Nancy A. Berryhill became acting Commissioner of Social Security on January 23, 2017, replacing Carolyn W. Colvin.

II. LEGAL ANALYSIS

A. Standard of Review

The standard of review in social security cases is whether substantial evidence exists in the record to support the Commissioner's decision. *Allen v. Bowen*, 881 F.2d 37, 39 (3d Cir. 1989). Substantial evidence has been defined as "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate." *Ventura v. Shalala*, 55 F.3d 900, 901 (3d Cir. 1995), *quoting Richardson v. Perales*, 402 U.S. 389, 401 (1971). Additionally, the Commissioner's findings of fact, if supported by substantial evidence, are conclusive. 42 U.S.C. §405(g); *Dobrowolsky v. Califano*, 606 F.2d 403, 406 (3d Cir. 1979). A district court cannot conduct a *de novo* review of the Commissioner's decision or re-weigh the evidence of record. *Palmer v. Apfel*, 995 F.Supp. 549, 552 (E.D. Pa. 1998). Where the ALJ's findings of fact are supported by substantial evidence, a court is bound by those findings, even if the court would have decided the factual inquiry differently. *Hartranft v. Apfel*, 181 F.3d 358, 360 (3d Cir. 1999). To determine whether a finding is supported by substantial evidence, however, the district court must review the record as a whole. *See*, 5 U.S.C. §706.

To be eligible for social security benefits, the plaintiff must demonstrate that he cannot engage in substantial gainful activity because of a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of at least 12 months. 42 U.S.C. §423(d)(1)(A); *Brewster v. Heckler*, 786 F.2d 581, 583 (3d Cir. 1986).

The Commissioner has provided the ALJ with a five-step sequential analysis to use when evaluating the disabled status of each claimant. 20 C.F.R. §404.1520(a). The ALJ must determine: (1) whether the claimant is currently engaged in substantial gainful activity; (2) if not, whether the claimant has a severe impairment; (3) if the claimant has a severe impairment, whether it meets or equals the criteria listed in 20 C.F.R., pt. 404, subpt. P., appx. 1; (4) if the impairment does not satisfy one of the impairment listings, whether the claimant's impairments

prevent him from performing his past relevant work; and (5) if the claimant is incapable of performing his past relevant work, whether he can perform any other work which exists in the national economy, in light of his age, education, work experience and residual functional capacity. 20 C.F.R. §404.1520. The claimant carries the initial burden of demonstrating by medical evidence that he is unable to return to his previous employment (steps 1-4). *Dobrowolsky*, 606 F.2d at 406. Once the claimant meets this burden, the burden of proof shifts to the Commissioner to show that the claimant can engage in alternative substantial gainful activity (step 5). *Id.*

A district court, after reviewing the entire record may affirm, modify, or reverse the decision with or without remand to the Commissioner for rehearing. *Podedworny v. Harris*, 745 F.2d 210, 221 (3d Cir. 1984).

B. Reasons for Rejecting Opinion Evidence

Plaintiff argues that the ALJ erred in failing to give any reason for partially rejecting the opinion of Plaintiff's primary care physician, Dr. Saborio. (ECF No. 13, pp. 10-12). Specifically, Plaintiff submits that while the ALJ set forth which parts of Dr. Saborio's opinion he credited and rejected, he "was completely silent on why he rejected [the portion of] Dr. Saborio's opinion that Plaintiff could not tolerate even low stress jobs because of her uncontrolled depression." (ECF No. 13, p. 10). As such, Plaintiff suggests that remand is warranted.

In this case, the ALJ gave partial weight to the opinion of Dr. Saborio. (ECF No. 8-2, pp. 22-23). While the ALJ did set forth certain portions of the opinion he gave more weight and certain portions he gave less weight, there are portions of the opinion that the ALJ failed to address. Compare ECF No. 8-2, pp. 22-23 *with* No. 8-17, p. 30. For example, the ALJ did not address Dr. Saborio's opinion that Plaintiff was incapable of tolerating even "low stress" jobs. (ECF No. 8-17, p. 30). Certainly, the ALJ is not required to accept Dr. Saborio's opinion at all, much less do so wholesale. An ALJ, however, must provide sufficient explanation of his/her final determination to provide a reviewing court with the benefit of the factual basis underlying the

ultimate disability finding. *Cotter v. Harris*, 642 F.2d 700, 705 (3d Cir. 1981). To that end, an ALJ must set forth the reasons for crediting or discrediting relevant or pertinent medical evidence. *Burnett v. Comm’er of SS*, 220 F.3d 112, 121-22 (3d Cir. 2000). “Although the ALJ ‘may properly accept some parts of the medical evidence and reject other parts ... (s)he must consider all of the evidence and give some reason for discounting the evidence (s)he rejects.’” See *Lanza v. Astrue*, No. 08-301, 2009 WL 1147911, at *7 (W.D. Pa. April 28, 2009), *quoting* *Colon v. Barnhart*, 424 F.Supp.2d 805, 812 (E.D. Pa 2006). “‘In the absence of such an indication, the reviewing court cannot tell if significant probative evidence was not credited or simply ignored.’” *Burnett*, 220 F.3d at 121-122, *quoting* *Cotter v. Harris*, 642 F.2d 700, 705 (3d Cir. 1981). Without the same, a reviewing court cannot make a proper determination of whether the ALJ’s decision is based on substantial evidence. *Id.* In this case, the failure to address portions of Dr. Saborio’s opinion prohibits me from conducting a proper and meaningful review.

In opposition, Defendant suggests that there is ample evidence for me to make a meaningful review since it is evident the ALJ rejected the same because it was not consistent with other evidence of record. (ECF No. 15, pp. 8-11). Plaintiff, on the other hand, suggests there is other evidence of record with which it is consistent. (ECF No. 13, p. 12). This is not a decision I am to make in the first instance. It is the job of the ALJ to set forth his opinions and provide the rationale and evidence to support the same. As such, I find no merit to this argument.

Consequently, I find remand is warranted. An appropriate order shall follow.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LORI ANN SLABON,

Plaintiff,

-vs-

NANCY A. BERRYHILL,²
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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Civil Action No. 18-26

AMBROSE, Senior District Judge

ORDER OF COURT

THEREFORE, this 14th day of March, 2019, it is ordered that Plaintiff's Motion for Summary Judgment (ECF No. 12) is granted and Defendant's Motion for Summary Judgment (ECF No. 14) is denied.

It is further ordered that the decision of the Commissioner of Social Security is hereby vacated and the case is remanded for further administrative proceedings consistent with the foregoing opinion.

BY THE COURT:

s/ Donetta W. Ambrose
Donetta W. Ambrose
United States Senior District Judge

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